# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**O.J.APPEAL No. 24 of 2004**

**In**

**COMPANY APPLICATION No. 14 of 1994**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**
**THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

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**SWASHRAY BENEFIT PVT.LTD. - Petitioner(s)**

**Versus**

**THE CHAIRMAN,CLAIMS COMMITTE. SHRI M.T.TAKANI,(RTD.JUDGE.) &2 - Respondent(s)**

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**Appearance :**

MR KV SHELAT for Petitioner No(s).: 1.

MR MT KIKANI for Respondent No(s).: 1.
OFFICIAL LIQUIDATOR for Respondent No(s).: 2.

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**CORAM :HONOURABLE MR.JUSTICE R.S.GARG**
**THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 23/06/2005**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1.Heard Mr. K.V. Shelat, learned counsel for the appellant. None for the respondents.

2.Facts in nutshell are that the appellant-M/s. Swashray Benefit Pvt. Ltd., was incorporated and registered under the Companies Act, 1956, Company Petition No. 33 of 1977 came to be filed by a depositor for winding up of the Company. On 13.2.78 the High Court passed winding up orders. On 10.8.1992, Company Petitions Nos. 63 of 1992 and 64 of 1992 were filed by Daulatray B. Desai and Yagnesh R. Desai, presenting a Scheme for revival of the Company and proposing payment to the creditors-depositors of the Company under Section 391 of the Companies Act. The said Scheme came to be sanctioned on 10th August, 1992. In accordance with the Scheme, a Claims Committee was constituted, the said Committee was to be headed by Mr. Kikani as Chairman (a retired Judge of the City Civil Court). In accordance with the Scheme, the money was deposited by the sponsorers and the money in accordance with the directions and the claims of the claimants was distributed. On 11.4.1993, the Scheme was modified to some extent, but however, the money in accordance with the Scheme was paid to the claimants.

1.Mr. Kikani submitted a report to the Court submitting inter alia, that as the work has been completed to the extent of 96/97%, he be discharged of the liability/responsibility and the account which was opened in the name of the Registrar of the High Court be closed and the balance amount lying in the deposit in the said account be refunded back to Mr. Yagnesh R. Desai, Director-cum-Holder of the General Power of Attorney of the Company.

2.When the matter was taken up by the learned Single Judge, learned counsel for the Official Liquidator submitted that the first prayer to relieve Mr. Kikani can be granted, but other two prayers i.e., for closure of the account and returning the balance money to Mr. Yagnesh R. Desai cannot be allowed. Learned Single Judge upheld the objections, granted the first prayer relieving Mr. Kikani of his responsibility, but refused to pass order regarding closure of the bank account and payment of the money to Mr. Yagnesh R. Desai.

3.Being partly aggrieved by the said order, M/s. Swashray Benefit Pvt. Ltd., through its authorized signatory Mr. Yagnesh R. Desai is before this Court.

4.Mr. Shelat, learned counsel for the appellant submits that if there are no claimants against the Company and the Company has no responsibilities or liabilities to discharge barring a small amount of Rs. 8,342/-, then Company Petition/winding up proceedings cannot be kept pending ad infinitum. His submission is that the appellant-Company, through its authorized signatory is ready and willing to furnish an undertaking to the satisfaction of the Court that if any person makes the claim, then, the authorized signatory would meet the claim and pay the amount. His submission is that for the small amount of Rs. 8342/- a sum of Rs.2.00 lacs and odd cannot be kept in suspense for an indefinite period.

5.As none appears for the parties, we are proceeding exparte.

6.Learned Single Judge has nowhere observed that the report of Mr. Kikani is wrong. He has observed that Mr. Kikani deserves to be relieved of his responsibility, but the learned Single Judge does not say that what will happen to the money belonging to the Company which is beyond the alleged liability of Rs.8342/-.

7.In our opinion, Mr. Kikani's report that the account should be closed and the money be refunded to the Company was justifiable suggestion given by him. Taking into consideration that almost about a sum of Rs.76.00 lacs has been disbursed and distributed and only a sum of Rs. 8342/- is to be paid to those whose whereabouts are yet not known and who have yet not lodged their claim before the Court, we are of the opinion that the accounts opened in the name of the Registrar for representing the present Company deserve to be closed and the money lying in the said account must be refunded back to Mr. Yagnesh R. Desai, Director-cum- Authorized Signatory and holder of the power of attorney for the Company. After the account is closed, the money shall be paid to Mr. Yagnesh R. Desai. However, Mr. Desai shall furnish an undertaking in the form of an affidavit that in the event any person from amongst those eight persons, whose details have been given in the report of Mr. Kikani lodges his claim, then the said claim would be satisfied by the Company/Mr.Yagnesh R. Desai. The appeal is allowed.

8.In view of this order, the learned Company Judge is requested to proceed further in the matter. He shall decide whether in light of this final order, winding up petition is still to be continued or is to be disposed of finally.

**[R.S. GARG, J.]**

**[RAVI R. TRIPATHI, J.]**

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